

ELECTRONICALLY FILED

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[Proposed] Counsel for the Official Committee Of
 Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:) BK-S-06-10725-LBR
 USA COMMERCIAL MORTGAGE COMPANY,) Chapter 11
 Debtor.)

In re:) BK-S-06-10726-LBR
 USA CAPITAL REALTY ADVISORS, LLC,) Chapter 11
 Debtor.)

In re:) BK-S-06-10727-LBR
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,) Chapter 11
 Debtor.)

In re:) BK-S-06-10728-LBR
 USA CAPITAL FIRST TRUST DEED FUND, LLC,) Chapter 11
 Debtor.)

In re:) BK-S-06-10729-LBR
 USA SECURITIES, LLC,) Chapter 11
 Debtor.)

Affects)

- ☒ All Debtors)
☐ USA Commercial Mortgage Co.)
☐ USA Securities, LLC)
☐ USA Capital Realty Advisors, LLC)
☐ USA Capital Diversified Trust Deed)
☐ USA First Trust Deed Fund, LLC)

Date: June 5, 2006
 Time: 9:30 a.m.
 Place: Courtroom #2

**OMNIBUS REPLY TO OPPOSITIONS FILED AGAINST THE EMPLOYMENT OF
 STUTMAN, TREISTER & GLATT, P.C. AND SHEA & CARLYON, LTD. AS COUNSEL
 TO THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF USA
CAPITAL FIRST TRUST DEED FUND, LLC (AFFECTS ALL DEBTORS)**

1 **TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:**

2 The Official Committee of Equity Security Holders of USA Capital First Trust
3 Deed Fund, LLC (the "First Trust Deed Committee") appointed in the above-captioned
4 bankruptcy cases (the "Chapter 11 Cases"), hereby replies to the oppositions (the "Oppositions")
5 filed against the First Trust Deed Committee's applications (the "Employment Applications") to
6 Stutman, Treister & Glatt, P.C. ("ST&G") and Shea & Carlyon, Ltd. ("Shea & Carlyon"), which
7 are listed below:

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9 (1) The United States Trustee's Opposition To Application To
10 Employ Stutman, Treister & Glatt As Counsel For Investor
11 Committees For Matters Of Common Interest (the "UST ST&G
12 Opposition") [docket # 388];

13 (2) The United States Trustee's Opposition To Application To
14 Employ Shea & Carlyon, Ltd. As Special Counsel (the "UST Shea
15 & Carlyon Opposition" and together with the UST ST&G
16 Opposition, the "UST Oppositions") [docket # 389]; and

17 (3) Limited Opposition To Application By the Official Committees
18 To Employ Stutman, Treister & Glatt, P.C. And Shea And
19 Carlyon, Ltd. filed by Robert C. LePome on behalf of certain
20 parties in interest (the "LePome Opposition") [docket # 364].

21 In replying to the Oppositions, the First Trust Deed Committee requests that the
22 Court overrule the Oppositions and authorize the employment of ST&G and Shea & Carlyon as
23 special bankruptcy counsel and as special (Nevada) counsel to the First Trust Deed Committee,
24 respectively.

25 **I. FACTS**

26 1. On May 18, 2006, the First Trust Deed Committee, the Official
27 Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (the
28 "Diversified Trust Deed Committee"); and the Official Committee of Holders Of Executory
Contract Rights Through USA Commercial Mortgage Company (the "Direct Lender Committee"
and, collectively with the First Trust Deed Committee and Diversified Trust Deed Committee,
the "Investor Committees") filed the "Application By The Official Investor Committees To
Employ Stutman, Treister & Glatt, P.C. For Matters Of Common Interest" (the "ST&G

Application") [docket # 280], pursuant to which the Investor Committees sought Court authorization to employ ST&G as their special bankruptcy counsel in the Chapter 11 Cases.

2. On May 19, 2006, the Investor Committees filed the "Application For Order Appointing Shea & Carlyon, Ltd. As Special (Nevada) Counsel For The Official Committees Of Equity Security Holders Of USA Capital First Trust Deed Fund And USA Capital Diversified Trust Deed Fund; And The Official Committee Of Holders Of Executory Contract Rights Of USA Commercial Mortgage Company" (the "Shea & Carlyon Application") [docket # 303], pursuant to which the Investor Committees sought Court authorization to employ Shea & Carlyon as their special Nevada counsel in the Chapter 11 Cases.

3. On May 25, 2006, the LePome Opposition was filed, and on May 26, 2006, the UST Oppositions were filed.¹

4. On May 26, 2006, in response to the Direct Lender Committee's decision not to pursue joint representation with the other Investor Committees, the First Trust Deed Committee filed amendments to both the ST&G Application ("ST&G Amendment") and the Shea & Carlyon Application (the "Shea & Carlyon Amendment") [respectively, docket # 397 and docket # 398], pursuant to which the First Trust Deed Committee requested that the Court authorize it to employ ST&G as its special bankruptcy counsel and Shea & Carlyon as its special Nevada counsel.

II. THE UST OPPOSITIONS ARE MOOT.

5. The UST Oppositions oppose the employment of ST&G and/or Shea & Carlyon on the grounds that the proposed representation by one set of counsel of more than one committee in the Chapter 11 Cases poses a disqualifying conflict.

6. However, as set forth in the amendments to the Employment Applications filed on May 26, 2006 [docket #'s 397 and 398], neither ST&G nor Shea & Carlyon propose to represent any committee other than the First Trust Deed Committee. Accordingly, if not

¹ The McKnight 2000 Family Trust ("McKnight") also filed a limited objection to the ST&G Employment Application on May 26, 2006 [docket # 372]. Subsequently, on June 1, 2006, McKnight withdrew its objection [docket # 434].

otherwise withdrawn, the UST Oppositions should be overruled on the grounds that they are moot.

III. THE LEPOME OPPOSITION IS PREMATURE.

7. The LePome Opposition is premature in that it objects to the employment of ST&G with respect to ST&G's proposed compensation. As the ST&G Application explicitly provides, ST&G's employment is sought with the knowledge that any compensation awarded to ST&G in the Chapter 11 Cases is subject to the Court's approval and must meet the standards set forth in sections 330 and 331 of the Bankruptcy Code. In fact, the ST&G Application states, "ST&G acknowledges that the approval of this Application does not indicate Court approval of its Guideline Hourly Rates." Application, ¶ 25. It is simply premature for the Court to make any ruling on ST&G's hourly rates at this time. Therefore, the First Trust Deed Committee requests that the Court overrule the LePome Opposition, without prejudice to any right to raise an objection at the appropriate time.

WHEREFORE, the First Trust Deed Committee hereby requests that the Court overrule the Oppositions and enter an order authorizing the First Trust Deed Committee to employ ST&G as special bankruptcy counsel and Shea & Carlyon as special (Nevada) counsel, *nunc pro tunc* as of May 10, 2006, to represent it with compensation that is at the expense of the USA Capital First Trust Deed Fund, LLC estate to be in such amount as the Court may hereafter allow.

Respectfully submitted this 2nd day of June, 2006.

/s/ Eve H. Karasik

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